

COURT OF APPEALS OF VIRGINIA

CRIMINAL APPEALS PROCEDURE

The Court of Appeals is the intermediate appellate court with limited jurisdiction.

Rules of Court: **Part Five A** Jurisdiction of Court of Appeals: **§17.1-406**

To appeal a criminal case to the Court of Appeals, the appealing party or attorney must:

1. File a Notice of Appeal with the trial court. Rule 5A:6
 - Due 30 days after entry of final judgment or other appealable order or decree.
 - Original Notice of Appeal is filed in the clerk's office of the trial court. §17.1-407
 - Copy of Notice of Appeal is mailed or delivered to all opposing counsel and the Clerk of the Court of Appeals.
 - The copy of the Notice of Appeal mailed to the Clerk of the Court of Appeals must be accompanied by a \$50.00 filing fee. (§17.1-418 & Rule 5A:6(c)), payable in cash or by check or money order made payable to the Court of Appeals of Virginia. One who has been determined by the trial court to be indigent or who is represented by appointed counsel is excused from paying the fees.
 - The forms for a notice of appeal and for the required certificate are at Rule 5A:6 or can be accessed at the following website:

<http://www.courts.state.va.us/cav/forms/home.html>

http://www.courts.state.va.us/cav/forms/notice_of_appeal.pdf

2. File Transcript or Written Statement of Facts. Rule 5A:8
 - **Transcript** due 60 days after entry of judgment appealed.
 - Extension of time to file a transcript – (Extensions only by the Court of Appeals of Virginia. Rule 5A-3(b), 5A:8(a); also refer to Jordan vs. Price, 3 VA. App.672, 353 S.E.2d 168 (1987))
 - Transcripts are filed in the clerk's office of the trial court.
 - Within 10 days of filing the transcript with the trial court written notice must be sent to all counsel or parties of the date on which the transcript was filed, and file a copy of the said notice with the trial court.
 - **Written Statement of Facts:** (in lieu of transcript) must be filed in the office of the clerk of the trial court within 55 days after entry of judgment appealed. See Rule 5A:8(c) for additional requirements.
3. Preparation and Transmission of Record. Rule 5A:10
 - Clerk of the **trial** court sends trial court record to the Court of Appeals.
 - Clerk of the Court of Appeals notifies the parties of the date on which the record was filed.
 - The clerk of the trial court is not required to transmit exhibits of unusual bulk, weight or character with the record unless directed to do so by a party or by the clerk of the appellate court. Rule 5A:10(d)(4). The party desiring to make such exhibits part of the record must arrange for their transportation and receipt.

4. File Petition for Appeal. Rule 5A:12

- Due 40 days after the trial court record filed.
- Filed in the Clerk's Office of the Court of Appeals.
- Original plus three copies required.
- Appellant must indicate whether oral argument before a panel of judges is requested.

After the petition for appeal is filed, the Commonwealth's Attorney may file a brief in opposition. If oral argument before a panel of three judges is requested, the appellant will be notified of the time and place for argument. (The appellee is not entitled to be heard.) Otherwise, appellant will likely not hear anything from the Court of Appeals until the petition has been decided. Notification of the disposition of the case is always in writing. If the appeal is granted, further steps must be taken to pursue the appeal:

5. File appendix and opening brief. Rules 5A:19, 20 & 25

- Due 40 days after the certificate of appeal from the Court of Appeals.
- Filed in the Court of Appeals clerk's office.
- Seven (7) copies must be filed; three (3) copies must be sent to opposing counsel.
- **Contact Court of Appeals for cover and binding requirements.**

6. Appellee's brief is due 25 days after the opening brief is filed.

7. Oral argument is automatically scheduled on appeals unless counsel sends written notification that counsel waives the hearing, Rule 5A:28, or the Court summarily affirms the trial court, Rule 5A:27.

Copies of all documents filed must be sent to opposing counsel. Rule 5A:1(b)(10).

**These are minimum requirements. Your case may have other requirements.
Please read all of the applicable rules and statutes.**

Rules of the Supreme Court of Virginia, published in Volume 11, Code of Virginia Annotated.

**Court of Appeals of Virginia
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